

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Brent D. Massmann et al. Art Unit: 1616
Serial No.: 10/652,679
Filed: August 29, 2003
Confirmation No.: 2560
For: SODIUM GLYPHOSATE COMPOSITIONS AND
 PROCESS FOR THEIR PREPARATION
Examiner: Alton Nathaniel Pryor

March 21, 2007

RESPONSE TO RESTRICTION REQUIREMENT

TO THE COMMISSIONER FOR PATENTS,
SIR:

In response to the Office action mailed February 23, 2007, applicants provisionally elect to prosecute the claims of Group I (claims 1-17) with traverse.

Reconsideration and withdrawal of the restriction requirement as to Groups I-III set forth in the Office action are respectfully requested.

A proper requirement for restriction between patentably distinct inventions requires a showing that 1) the inventions are independent or distinct as claimed; and 2) there would be a serious burden on the Examiner if restriction were not required. MPEP § 803.

Applicants respectfully submit that the Office has failed to make the required showing for a proper requirement for restriction as to the claims of Groups I-III.

The claims of Groups I-III are directed to related process inventions. Inventions as claimed are independent only if they are unconnected in design, operation and effect. MPEP § 806.6. Each of the claims of Groups I-III encompass processes for the preparation of a sodium glyphosate composition that comprise: (1) mixing particulate glyphosate acid, sodium hydroxide, water and optionally adjuvant in a reactor to form a reaction mass wherein the total amount of water added is from about 10% to about 40% by weight of particulate glyphosate acid, sodium hydroxide, water and any adjuvant added to the reactor; (2) causing a reaction of the glyphosate acid and sodium hydroxide that generates heat; and (3) forming a sodium glyphosate paste having a moisture content of from about 2% to about 20% by weight. Thus, by virtue of the common process steps and common sodium glyphosate compositions resulting from the processes, the claims of Groups I-III define related subject matter.

Further, the Office has failed to establish that the claims of the related process inventions of Groups I-III are distinct. MPEP § 806.05(j). Inventions are distinct if the inventions as claimed a) do not overlap in scope, i.e., are mutually exclusive; b) are not obvious variants; and c) are either not capable of use together or can have a materially different design, mode of operation, function or effect. The burden is on the Office to provide an example to support its determination of distinctiveness.

Applicants respectfully submit that the Office has failed to meet its burden. The respective claims (1-33) of Groups I-III are clearly not distinct in that the processes defined by the claims are not mutually exclusive, overlap in some respects and are capable of use together. The claims of Groups I-III define processes that are readily capable of being used together

in the preparation of a sodium glyphosate composition. Neither the structural limitations of the continuous reactor of claim 18 nor the continuous process for preparing a sodium glyphosate composition of claim 19 render the processes of the claims incapable of use together or in the process of claim 1.

Furthermore, to establish that two inventions in the same statutory class are mutually exclusive, the first invention must not infringe the second invention and the second invention must not infringe the first invention. MPEP § 806.05. Clearly, the process of claim 18 would infringe claim 1 as claim 18 depends from claim 1. In addition, the continuous process of claim 19 would infringe claim 1. Accordingly, Groups I-III are directed to related process inventions and the claims thereof do not define independent or distinct inventions.

Moreover, the Office has failed to establish that there would be a serious burden if restriction among Groups I-III was not required. To establish such a burden, the Office must show by appropriate explanation a) separate classification of each invention; b) separate status in the art; or 3) a different field of search for each invention. MPEP § 808.02. The Office asserts on page 4 of the Office action that a search of the inventions of Groups I-III would impose an undue burden upon the Examiner because "the inventions require a different field of search. . . . " However, contrary to this assertion, the claims of Groups I-III have each been classified in the same class and subclass, class 504, subclass 206. Where the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reason exists for dividing among independent or related inventions. MPEP § 808.02. The fact that the Office has already searched and examined all of the pending claims in

three Office actions mailed December 21, 2005, April 14, 2006 and September 6, 2006 belies the assertion that continuing examination of all the pending claims would impose undue burden on the Examiner.

In view of the above, applicants respectfully request withdrawal of the restriction requirement to the subject matter of Groups I-III.

The Commissioner is hereby authorized to charge any fees in connection with this response to Deposit Account No. 19-1345.

Respectfully submitted,

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